

A Sampling of County Approaches to Regulating the Production, Processing, and Retail Sales of Recreational Marijuana

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The Lewis County Planning Commission has been exploring potential amendments to the county zoning code relating to the production, processing, and retailing of recreational marijuana. To aid in their deliberation, members of the commission requested information about how other Washington counties are addressing this issue. This report provides a regulatory summary of 10 randomly selected counties on the east- and west-sides of the state.

Benton County

Benton County passed an ordinance regulating recreational marijuana in February 2014. "Subject to any limitations imposed by Washington State law..." the county

- Considers production as an agricultural activity, allowing it in its Agricultural, Rural Lands 5, Rural Lands 20, Light Industrial, and Heavy Industrial zoning districts
- Allows processing in the Heavy Industrial and Unclassified zoning districts; however, will allow it in the Agricultural district if the nature of the processing falls within the definition of an "agricultural related industry"
- Allows retail sales in its General Commercial, Community Commercial, and Interchange Commercial zoning districts

The county relies on Chapter 314-55 WAC to regulate all other facets of marijuana production, processing, and retailing.

Cowlitz County

Cowlitz County adopted an ordinance in July 2014. The ordinance focuses on regulating production and processing based on the intensity of the activity.

- Adopts a series of specific definitions¹
- Relies on the WAC Tier 1, 2, and 3 production definitions to determine the location and permitting procedures for production facilities
 1. Tier 1 requires an Administrative Review in the Urban, Rural, Industrial, Agriculture, and Remote areas

¹ "Urban" in Cowlitz County includes the Urban Residential, Suburban Residential, Multiple Family, Neighborhood Commercial, and Urban Commercial zoning districts. "Agriculture Areas" include the Agriculture, Agriculture-38, and Agriculture-Industrial Districts. "Industrial areas" include both Light and Heavy Manufacturing districts. "Remote Areas" include the Forestry Recreation district and areas classified as Forestry-Open Space.

2. Tier 2 requires a Special Use Permit in the Urban, Rural, Industrial, Agriculture, and Remote areas
 3. Tier 3 requires a Special Use Permit in the Urban and Rural areas and an Administrative Review in the Industrial areas
- Identifies two types of processors; Type 1 processors dry, cure, trim, and package marijuana while Type 2 processors engage in extracting concentrates, infusing products, or uses mechanical/chemical processes in addition to drying, curing, trimming, and packaging
 1. Type 1 processors require an Administrative Review in the Urban, Rural, Industrial, and Forestry-Open Space areas and a Special Use Permit in the Agricultural Districts
 2. Type 2 processors require an Administrative Review in the Industrial Areas and a Special Use Permit in the Urban and Rural areas.
 - Retail stores require an Administrative Review in the Urban and Industrial areas and a Special Use Permit in the Rural areas
 - Includes the following development standards:
 1. All recreational marijuana facilities and associated structures and development shall conform to the appropriate sections of the International Building Code (IBC) and International Fire Code (IFC)
 2. Outdoor production is not allowed, although greenhouses are allowed if in an opaque structure and adequately screened from view from the rights-of-way and neighboring properties
 3. Requires 250-foot setback from the exterior wall of any residence if marijuana land uses are in the Urban or Industrial areas
 4. Requires 75-foot setback from the exterior wall of any residence if marijuana land uses are in the Rural, Remote, or Agricultural areas
 5. Lighting proposed with facilities needs to be hooded or shielded to prevent light transmission to neighboring properties
 6. A minimum four-foot high vegetative screen is required to mitigate visual impacts of a marijuana facility

7. Facilities must have legal access to the public right-of-way
 8. Facilities in the Rural, Remote, or Agricultural areas must be on parcels no less than five acres
 9. Facilities in the Urban and Industrial areas must be on parcels no less than one acre
 10. Tier 1 production and Tier 1 processing facilities operated in conjunction on the same parcel are not subject to the minimum lot sizes above
 11. Cameras used for security at facilities may not intrude on the privacy of adjacent properties
 12. No odor or smoke detectable at or beyond the walls of the facility that create a public nuisance or health hazard
 13. 300-foot separation required between marijuana retailers
- Provides for review process and administration of the ordinance

Grant County

The Grant County Planning Department issued an Administrative Official Interpretation on interpreting production, processing, and retail sales of recreational marijuana in December 2013. This approach essentially states that marijuana production, processing, and retailing is similar to existing uses already in the comprehensive plan and zoning ordinance. The county did not adopt any additional regulations for managing these activities. The main points of this position are:

- Marijuana production meets the definition of “Agriculture” and “Agricultural Activities” in the code
- Marijuana processing meets the definition of an “Agricultural Processing Facility”
- Marijuana retailing meets the definition of “Retail sales of Agricultural Products”
- The WAC 8-foot fence height requirement for outdoor grows require a variance in order to exceed the county’s six-foot height restriction

- Due to the inconsistency between state and federal law and liability concerns, the planning department will not confirm or determine if a particular site is zoned or otherwise appropriate for siting marijuana production, processing, and retail sales

Jefferson County

Jefferson County at this time is considering the adoption of an ordinance; it currently has a moratorium in place. They expect the new law to be in place around December 2014. Study documents on the county's website indicate they may adopt the following policies:

- Consider marijuana production to be an agricultural use allowed in all zones, although it may consider agricultural activities a nuisance in the Rural Residential 1:5 district
- If production or processing and associated buildings are in a critical area, a permit is necessary
- Temporary growing structures are exempt from the building code per RCW 19.27.065
- Processing will be allowed in Industrial and Agricultural zones as well as in the Residential zones with a conditional use permit provided that the proposed activity meets the definition of "cottage industry"
- Retailing allowed in Industrial zones, Commercial zones, and Residential zones with a conditional use permit if meeting the definition of "cottage industry"

Kitsap County

Kitsap County passed an ordinance in 2013 that deals with definitions, locations, and permit procedures. The ordinance:

- Allows Tier, 1, 2, and 3 marijuana producers in the Urban Industrial, Rural Employment Center, and 12 Trees Employment Center zoning districts
- Allows Tier, 1, and 2 marijuana producers to locate in the Business Park zoning district
- Allows Tier 2 and 3 marijuana producers to locate in the Business Center zoning district
- Allows Tier 1 and 2 marijuana producers to locate in the Rural Industrial zoning district
- Marijuana processors may locate in the Business Center, Business Park, Urban Industrial, Rural Employment Center, and 12 Trees Employment Center zoning districts

- Marijuana retailers may locate in the Highway/Tourist Commercial, Regional Commercial, and Rural Employment Center zoning districts
- Marijuana retailers may locate in Mixed Use zoning district with an administrative conditional use permit
- No existing marijuana producer, processor, or retail established before the adoption of the ordinance is “grandfathered” (*Note: this likely relates to preexisting medical marijuana establishments*)

Kittitas County

Kittitas County amended its development code in April 2014 to address production, processing, and retailing of marijuana.

- Adopted specific definitions for marijuana processing, production, and retail sales
- Marijuana production and processing on a conforming, legal lot of record is a permitted use in the Commercial Agriculture and Rural Working districts provided:
 1. Meets all criteria and regulations in WAC 314-55 and RCW 69.50
 2. Meets all fire and building code requirements
 3. Agree to annual fire protection inspection
 4. Provide a bond or assignment of funds for five years the equivalent of 125% of the cost to complete fence plan and survival of landscaping for visual screening
 5. Setback all buildings or planting operations requiring security at least 60 feet from a property boundary
 6. Security lighting is to be directed downward/away from adjoining property and use motion sensors
- Marijuana production and processing on a nonconforming legal lot of record in the Commercial Agriculture and Rural Working districts is allowed subject to an administrative conditional use permit; provided that the site must be at least 10 acres in size and meet the requirements 1 through 6 above
- Marijuana production and processing in the Light Industrial district is a permitted use that must:
 1. Meet all criteria and regulations in WAC 314-55 and RCW 69.50
 2. Meet all fire and building code requirements

3. Agree to annual fire protection inspection
4. Restrict all production and processing within a fully enclosed facility

Mason County

Mason County adopted their regulations in November 2013. The main points of their ordinance are:

- Producers and processors are permitted in all districts, with the following exceptions:
 1. In the Rural Residential districts, parcels must be at least five acres or larger and there must be a 100-foot buffer from neighboring residential dwelling unit
 2. In the Airport Industrial district, marijuana producers and processors are subject to the codes, covenants, and restrictions of the Port of Shelton
- Retailers are a permitted use in the Rural Commercial, General Commercial, Commercial-Industrial, Highway Commercial, Business Park, and Mixed Use districts
- Marijuana production must take place within an enclosed facility or rigid greenhouse
- Outdoor marijuana production may take place in non-rigid greenhouses, other structures, or open fields provided it is behind a physical barrier and obscured from public view

Okanogan County

Okanogan County has decided not to adopt any specific codes relating to marijuana production, processing, and retailing. Instead, it manages these uses within the context of its existing comprehensive plan and development regulations.

The Board of Commissioners set the county's current policy at a December 2013 meeting where it rejected a staff and planning commission proposal to regulate marijuana production, processing, and retailing through the zoning ordinance. The Board held that WAC 314-55 provided enough regulation, that marijuana production and processing was agricultural in nature (which the county already permits), and any further restrictions was simply over-regulating the issue. The board determined that if conflicts arose through normal zoning and permitting, the code provides for an appeal process.

Spokane County

Spokane County passed an interim zoning ordinance in May 2014 relating to marijuana production, processing, and retail sales while it continues its efforts to develop permanent regulations.

In the meantime, the interim ordinance allows:

- Marijuana production as a permitted use in its Large Tract Agricultural, Small Tract Agricultural, Forest Land, the Rural -5, Rural Traditional, Urban Reserve, and Rural Conservation Zones
- Marijuana processing, limited to packaging and labeling, as a permitted use in Large Tract Agricultural, Small Tract Agricultural, Forest Land, the Rural -5, Rural Traditional, Urban Reserve, Rural Conservation, and Mineral Lands Zones
- Marijuana production and processing in the above zones must meet the following provisions:
 1. Indoor and outdoor production cannot be closer than 100 feet from any front property line (but does not apply to existing structures); 50 feet from any side, flanking, or rear property line; and 300 feet from any primary residence on an adjacent property
 2. Distances from an adjacent property line may be reduced by up to 50% if the adjacent property owner signs a waiver
 3. Tier 1 production must be on a lot at least three acres in size; Tier 2 and 3 production must be on a lot at least five acres in size

Conclusions

While each county has responded to regulating marijuana production, processing, and retail sales in a way that reflects its own land use patterns and philosophical make up, a few commonalities worth noting surface among the ordinances.

A theme in many of the codes was to recognize the differences in the level of intensity of production, and in one case, processing. It was common to see small-scale Tier 1 production in a greater range of zoning districts.

In those counties surveyed that have a substantial agricultural presence, there was a strong identification of marijuana production and processing as being an agricultural practice.

Sometimes this link was direct – that production and processing was an actual agricultural practice. In other cases, it was more indirect – that is, while production and processing had distinct definitions, ordinances grouped them with agricultural uses and activities. In the latter situation, the counties did this because of special provisions placed on them, such as distances from roads or residential uses, minimum lot size, etc.

Finally, the common approaches to permitting these uses typically were permitted out-right, required administrative review, or in a limited number of circumstances related to location or intensity, with a special use permit.

How did the citizens in these counties vote for I-502?

Initiative 502 County Official Results (Washington Secretary of State)²

County	Majority Voting Result
Benton County	No – 56.41%
Cowlitz County	No – 53.65%
Grant County	No – 55.41%
Jefferson County	Yes – 65.23%
Kitsap County	Yes – 55.98%
Kittitas County	No – 51.58%
Mason County	Yes- 55.32%
Okanogan County	Yes – 51.85%
Spokane County	Yes – 52.15%
Lewis County	No – 55.38%

² http://vote.wa.gov/results/20121106/Initiative-Measure-No-502-Concerns-marijuana_ByCounty.html